

December 18, 2024

VIA ECF

Magistrate Judge Peggy Kuo
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

Re: *State Farm Mut. v. Metro Pain*, 1:21-cv-05523 – Joint Report Re Discovery Status

Dear Judge Kuo:

Pursuant to this Court’s November 13, 2024 text order, plaintiffs State Farm Mutual Automobile Insurance Company and State Farm Fire and Casualty Company (collectively, “Plaintiffs”) and defendants Yan Moshe, Hackensack Specialty ASC LLC, Integrated Specialty ASC LLC, Reuven Alon, Columbus Imaging Center LLC, Medaid Radiology LLC, SCOB LLC, Citimed Surgery Center LLC, NJMHMC LLC, Star Solutions Services LLC, Beshert Corp., Nizar Kifaieh, M.D., Premier Anesthesia Associates PA, Amro Mahmoud Barakat, P.T., Barakat PT, P.C., Regina Moshe, M.D., Citimedical I, PLLC, Citimed Services, P.A., Citimedical Services, P.C., Citimed Complete Medical Care P.C., Citimed Management Services Inc., Vadim Dolsky, L.Ac., Optimum Health Acupuncture P.C., Peter Kopach, L.Ac., and First Alternative PLM Acupuncture, P.C.¹ (collectively, “Defendants”), respectfully write to address the status of fact discovery in this case and whether any unrepresented defendants will obtain new counsel.

I. Procedural History and Representation Status of Remaining Defendants

Plaintiffs commenced this action on October 5, 2021, filed the First Amended Complaint (Dkt. 63) on December 14, 2021, and filed the operative Second Amended Complaint (Dkt. 388) (“SAC”) on August 17, 2023. The SAC names 63 defendants, 15 of which have not appeared in this action. Of those 15 defendants, certificates of default have been entered against 13 defendants,² a certificate of default has been requested for defendant Leonard Luna, D.C. but not yet entered (Dkt. 574), and Plaintiffs have been unable to serve the SAC and summons on Stacy Juyoung

¹ On December 12 and 16, 2024, Plaintiffs circulated versions of this report to counsel of record for all defendants appearing in this action and requested their input and approval to file with the Court. The following defendants did not respond to Plaintiffs’ correspondence: Metro Pain Specialists P.C., Tri-Borough NY Medical Practice P.C., Leonid Shapiro, M.D., Mark Gladstein, M.D., Victoria Frenkel, and Advanced Comprehensive Laboratory LLC (d/b/a TopLab). The signature blocks of counsel for these defendants are left unsigned below.

² These are defendants Irina Kataeva, P.T., Cityworks Physical Therapy P.C., Ahmed Mahmoud Abdelshafy Elmansy, P.T, Sky Limit Physical Therapy, P.C., Kings Chiropractic Wellness, P.C., Jongdug Park, D.C., All About Chiropractic P.C., J Park Chiropractic P.C., SJM Acupuncture P.C., Heyongsock Choi, L.Ac., Choice Acupuncture PLLC, Choi-Go Acupuncture LLC, and Right Aid Medical Supply Corp.

Moon, L.Ac. Of the remaining 48 defendants, Plaintiffs settled their claims with 15 defendants³ and have reached settlements in principal with three defendants.⁴ Of the 30 remaining active defendants, 24 include individual defendants Yan Moshe, Reuven Alon, Dr. Regina Moshe, Vadim Dolsky, Leonid Shapiro, Nizar Kifaieh, and corporate defendants owned by them. The remaining six defendants are Amro Mahmoud Barakat, P.T., Barakat PT, P.C., Peter Kopach, L.Ac., First Alternative PLM Acupuncture P.C., Mohamed Sayed Ahmed Hassan, P.T., and Nile Rehab Physical Therapy, P.C.

The only defendants who are currently unrepresented in the case and for which certificates of default have not been entered or requested are Mohamed Sayed Ahmed Hassan, P.T. (“Hassan”) and Nile Rehab Physical Therapy, P.C. (“Nile Rehab PT”). As of the filing of this joint report, Plaintiffs have received no indication from Hassan or Nile Rehab PT whether they intend to appear through counsel or otherwise participate in this action. *See* 12/9/2024 Text Order; Dkt. 646.

II. Status of Fact Discovery

1. Discovery Conducted by Plaintiffs

Plaintiffs have served written requests for documents and interrogatories on all defendants appearing in the case under the SAC. Plaintiffs have also served subpoenas *duces tecum* on various nonparties, including financial institutions, accountants, funding companies, and former or current employees of defendants.

Plaintiffs have taken seven depositions⁵ and noticed an additional 14 depositions. Plaintiffs are currently negotiating deposition dates with nonparties and intend to notice additional depositions, including Jelani Wray. Under this Court’s order dated August 14, 2023, Plaintiffs are permitted to take up to 36 depositions.

Thus far, 32 defendants have served discovery requests on Plaintiffs. Pursuant to defendants’ discovery demands, Plaintiffs have produced over 4,763,778 pages of documents and are continuing to review and produce responsive records on a rolling basis. In November, Plaintiffs also began producing their ESI pursuant to the ESI Discovery Protocol (Dkt. 375) and continue to

³ These are defendants Raouf Akl, P.T., Primavera Physical Therapy, P.C., Sherwin Catugda Paller, P.T., Floral Park Physical Therapy, P.C., Giulio Caruso, D.C., Brook Chiropractic of NY P.C., Integrated Chiropractic of NY P.C., Longyu Ma, L.Ac., Hidden Dragon Acupuncture P.C., Xia Guan, L.Ac., Rebound Acupuncture P.C., Vladimir Nazarov, Paul Victor Scarborough, D.C., A.O.T. Chiropractic P.C., and Evolution Chiropractic P.C.

⁴ These are defendants Mark Gladstein, M.D., Victoria Frenkel, and Advanced Comprehensive Laboratory LLC (d/b/a TopLab).

⁵ Those deposed were nonparties Viktoriya Shakarova, Isaias Barrera-Perez, Damon Minus, and Dmitri Ivanovski, as well as defendants Amro Barakat, Beshert Corp., and Citimed Management Services Inc (the latter two being Rule 30(b)(6) depositions).

make ESI productions on a rolling basis. Plaintiffs anticipate completing their ESI productions in early February 2025. Plaintiffs have produced all non-ESI discovery.

2. Discovery Conducted by Defendants

i. Defendants Yan Moshe, Hackensack Specialty ASC LLC, Integrated Specialty ASC LLC, Reuven Alon, Columbus Imaging Center LLC, Medaid Radiology LLC, SCOB LLC, Citimed Surgery Center LLC, NJMHC LLC, Star Solutions Services LLC, Beshert Corp., Nizar Kifaieh, M.D., and Premier Anesthesia Associates PA

Defendants Yan Moshe, Hackensack Specialty ASC LLC, Integrated Specialty ASC LLC, Reuven Alon, Columbus Imaging Center LLC, Medaid Radiology LLC, SCOB LLC, Citimed Surgery Center LLC, NJMHC LLC, Star Solutions Services, LLC, Beshert Corp., Nizar Kifaieh, M.D., and Premier Anesthesia Associates PA (collectively “These Defendants”) have served requests for documents and interrogatories on Plaintiffs. Defendants have not yet noticed fact witness depositions, but intend on noticing approximately twenty (20) depositions, including corporate representatives of Plaintiffs and individuals who were involved in the investigation and filing of Plaintiffs’ complaint. Defendants may also subpoena additional witnesses, depending on how the representative depositions proceed. Plaintiffs are still in the process of producing ESI documents on a rolling basis. Plaintiff’s first ESI production was in November, and have advised they intend on completing the rolling productions in early February 2025.

These Defendants have answered all sets of interrogatories and supplemental interrogatories directed to them. These Defendants are continuing their ESI document production, and currently have a February 3, 2025 deadline to complete same. Defendant Yan Moshe has one outstanding document demand to respond to, and Plaintiffs have agreed to permit Mr. Moshe to respond on or before December 20, 2024.

ii. Defendants Amro Mahmoud Barakat, P.T., and Barakat PT, P.C.

Defendant Barakat PT PC and Barakat PT (collectively “Barakat Defendants”) have served requests for documents and interrogatories on Plaintiffs which have been responded. The Barakat Defendants responded to Interrogatories and a First Notice of Discovery Demands. The Barakat Defendants have a Second Production of Documents outstanding that they anticipate responding to in the near future. Defendants have not yet noticed fact witness depositions, but intend on noticing approximately three (3), including a corporate representative of Plaintiffs and individuals who were involved in the investigation and filing of Plaintiffs’ complaint. The Barakat Defendants have also engaged in settlement discussions and will soon be responding to the latest demand.

iii. Defendants Regina Moshe, M.D., Citimedical I, PLLC, Citimed Services, P.A., Citimedical Services, P.C., Citimed Complete Medical Care P.C., and Citimed Management Services Inc.

Defendants Regina Moshe, M.D., Citimedical I, PLLC, Citimed Services, P.A., Citimedical Services P.C., Citimed Complete Medical Care P.C., and Citimed Management Services Inc. (hereinafter collectively “Citimed Defendants”) have served requests for documents and interrogatories on Plaintiffs. Citimed Defendants have not yet noticed fact witness depositions but intend on noticing approximately twenty (20) depositions, including corporate representatives of Plaintiffs and individuals who were involved in the investigation and filing of Plaintiffs’ complaint. Defendants may also subpoena additional witnesses, depending on how the representative depositions proceed. Plaintiffs are still in the process of producing ESI documents on a rolling basis. Plaintiff’s first ESI production began in November and have advised they intend on completing the rolling productions in early February 2025.

These Defendants have answered all sets of interrogatories and supplemental interrogatories directed to them. These Defendants are continuing their ESI document production and will comport the ESI document production deadline with the other defendants in this case to have all ESI production completed by February 3, 2025. The only outstanding discovery demands that remain as to the Citimed Defendants are responding to outstanding demands as outlined in Plaintiffs’ November 8, 2024 letter, as to which counsel have met and conferred, and Plaintiffs’ Fourth Document Demand to Defendant Regina Moshe, MD. Citimed Defendants have encountered technical difficulties in renumbering the various document productions with Bates Numbers, and will provide all outstanding response on or before December 20, 2024.

iv. Defendants Vadim Dolsky, L.Ac. and Optimum Health Acupuncture P.C.

Defendants Vadim Dolsky, L.Ac., and Optimum Health Acupuncture P.C. (collectively referred to as the “Dolsky Defendants”), have served interrogatories on Plaintiffs. While the Dolsky Defendants have not yet noticed fact witness depositions, they intend to schedule approximately twenty (20) depositions, including those of corporate representatives of the Plaintiffs and individuals involved in the investigation and filing of Plaintiffs’ Complaint. Additionally, the Dolsky Defendants may issue subpoenas to further witnesses as necessary, based on the progress of the depositions. Plaintiffs are continuing to produce electronically stored information (ESI) on a rolling basis, with their initial production commencing in November. Plaintiffs have indicated their intention to complete this process by early February 2025.

The Dolsky Defendants have responded to all interrogatories and supplemental interrogatories directed to them. Defendant, Vadim Dolsky, has one outstanding document demand, which is expected to be served on Plaintiffs within the next several days. The Dolsky Defendants are in the process of gathering and preparing their ESI production. While some challenges have arisen in finalizing the preparation of the ESI, the Dolsky Defendants anticipate that these issues will be resolved shortly.

v. Defendants Peter Kopach, L.Ac. and First Alternative PLM Acupuncture, P.C.

Eisenberg & Carton (“E&C”) was retained and appeared for Defendants Peter Kopach, L.Ac. and First Alternative PLM Acupuncture, P.C. (collectively referred to as the “Kopach Defendants”) on November 25, 2024. E&C received the file in this matter from predecessor counsel on December 12. Accordingly, E&C has not yet had an opportunity to fully review that file. Nevertheless, it is E&C’s understanding that Kopach Defendants have served interrogatories on Plaintiffs, but have not yet noticed fact witness depositions. At this time the Kopach Defendants intend to join with the other defendants have stated that they intend to schedule approximately twenty (20) depositions, including those of corporate representatives of the Plaintiffs and individuals involved in the investigation and filing of Plaintiffs’ Complaint. Additionally, the Kopach Defendants may issue subpoenas to further witnesses as necessary, based on the progress of the depositions. Plaintiffs are continuing to produce electronically stored information (ESI) on a rolling basis, with their initial production commencing in November. Plaintiffs have indicated their intention to complete this process by early February 2025.

The Kopach Defendants have responded to Plaintiffs’ initial interrogatories and requests for production of documents, though Plaintiffs have raised issues regarding those responses which E&C will address. EC learned last week that Plaintiffs also have served supplemental interrogatories directed to the Kopach Defendants, to which response have not yet been served, and E&C will attend to those.

Respectfully Submitted,

By: /s/ Christopher T. Cook

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